



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
3 WORLD FINANCIAL CENTER
ROOM 4300
NEW YORK, NEW YORK 10281-1022

PREETHI KRISHNAMURTHY
(212) 336-0116
KrishnamurthyP@sec.gov

MEMO ENDORSED

June 23, 2008

VIA FACSIMILE: (212) 805-6326

Hon. Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street, Room 640
New York, NY 10007

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/26/08

RE: SEC v. Michael W. Crow, et al., 07 Civ. 3814 (CM)

Dear Judge McMahon:

I represent plaintiff Securities and Exchange Commission (the "Commission") in the above-referenced action. This requests leave to depose third-party witness Jennifer O'Shea, who, the Commission recently learned, may be outside the Court's jurisdiction at the time of trial. Because Ms. O'Shea may be leaving the country prior to July 15, and because the parties' joint pre-trial order is due July 15, the Commission respectfully seeks leave to depose Ms. O'Shea prior to that date. Non-expert discovery closed in this action on April 1, 2008. Counsel for defendant Michael W. Crow and affiliated parties ("Crow Defendants") and counsel for defendant Robert David Fuchs and affiliated parties ("Fuchs Defendants") have informed the Commission that they oppose the Commission's request.

The Commission charges in this action, among other things, that from at least late 2003 through at least late 2004, defendant Michael Crow repeatedly acted as an undisclosed principal of a registered securities brokerage firm known at times as "Duncan Capital LLC" ("Duncan Capital"), in violation of several registration and reporting provisions of the federal securities laws. Both Crow and Fuchs deny that Crow acted as a principal of Duncan Capital.

Jennifer O'Shea (then named Jennifer Handy) was Crow's executive assistant during the relevant period. In June 2004, Ms. O'Shea sent an email to a third party, attaching Mr. Crow's resume, and stating that Mr. Crow had personally revised the attached resume (Mr. Crow is copied on the email). Significantly for the Commission's claims, under the resume's heading "Specific Achievements," Mr. Crow listed the brokerage firm "Duncan Capital LLC," thus implying his control over the firm. A copy of the O'Shea (Handy) email and attached resume is attached hereto as Exhibit A.

At his March 18-19 deposition, the Commission showed Mr. Crow the email and attached resume, expecting Mr. Crow to confirm the resume as his own. Incredibly, Crow renounced the resume and testified on March 19 that "[i]t is obvious that I wasn't involved in

6/24/08
ORDERED that Jennifer Handy O'Shea be deposed
by July 15, 2008.
Colleen McMahon
USDC

Hon. Colleen McMahon
June 23, 2008
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putting this [resume] together." Ms. O'Shea has since confirmed for the Commission staff what her email represents: i.e., that Mr. Crow reviewed and approved his resume before she transmitted it.

Ms. O'Shea has lived within the Court's jurisdiction for years, and until very recently, neither she nor the Commission staff had any reason to believe that she would be unavailable to testify at trial. For this reason, and because only two busy weeks remained between the Crow deposition and the close of discovery, the Commission did not seek to take Ms. O'Shea's deposition at that time. On May 29, 2008, the Commission staff first learned from Ms. O'Shea that she may be moving to London in mid-July (Ms. O'Shea had only learned of the potential move one or two days before). The Commission last spoke with Ms. O'Shea on June 10, but she was unable to confirm her plans at that time. Ms. O'Shea has not returned several Commission telephone calls since then. The Commission anticipates that Ms. O'Shea's deposition would last no more than two hours, and it would not impose a significant inconvenience or burden on the parties.

The Crow and Fuchs Defendants nevertheless oppose the O'Shea deposition, contending that her testimony would constitute either unnecessary or improper "impeachment." (Exhibit B.) The Commission does not seek Ms. Handy's testimony for "impeachment." Rather, the Commission seeks it as direct evidence that Crow ran the registered broker-dealer. Ms. O'Shea's anticipated testimony will demonstrate that, during the relevant period, Crow himself publicly took credit for the registered broker-dealer's performance in his resume, notwithstanding his self-serving testimony to the contrary.¹

For the foregoing reasons, the Commission respectfully requests leave to depose Ms. O'Shea prior to July 15, 2008.

Respectfully submitted,



Preethi Krishnamurthy
Senior Counsel

cc: Martin P. Russo, Esq. (by email only)
Howard Sirota, Esq. (by email only)

¹ Even if the Commission were to offer Ms. O'Shea's testimony to impeach defendant Crow's credibility, it would be admissible to authenticate the resume, which is a prior inconsistent statement by a "party-opponent" (Crow). See Fed. R. Evid. 613(b).

Exhibit A

Paley, Michael D.

From: Jennifer Handy
Sent: Monday, June 07, 2004 5:52 PM
To: Manuel Ron
Cc: Michael Crow, Richard Smithline
Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - due diligence documentation
Attachments: Michael Crow Resume.doc

Attached is Michael's resume.

Jenn

Jennifer Handy
Duncan Capital Group LLC
830 Third Avenue, 14th Floor
New York, NY 10022
212.581.5150 Office
212.581.7010 Fax
212.922.2092 Direct
jh@duncancapital.net
www.duncancapital.net

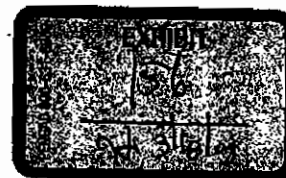
This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

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From: Manuel Ron
Sent: Monday, June 07, 2004 6:18 PM
To: Jennifer Handy
Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - due diligence documentation

Gracias

Manuel D. Ron
DC Asset Management LLC
830 Third Avenue
14th Floor
New York, New York 10022



Direct: (212) 922-1269

Fax: (212) 581-7010

Cell: (914) 260-0544

mr@duncancapital.net
www.duncancapital.net

—Original Message—

From: Jennifer Handy [mailto:jh@duncancapital.net]

Sent: Monday, June 07, 2004 3:50 PM

To: Manuel Ron

Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - due diligence documentation

Lito,

I've created a resume for Michael which he just finished revising. I'm updating it right now and will hopefully have it to you before 5:15.

Thanks,
Jenn

Jennifer Handy
Duncan Capital Group LLC
830 Third Avenue, 14th Floor
New York, NY 10022
212.581.5150 Office
212.581.7010 Fax
212.922.2092 Direct
jh@duncancapital.net
www.duncancapital.net

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From: Manuel Ron

Sent: Monday, June 07, 2004 12:55 PM

To: Jennifer Handy

Subject: FW: DC Opportunity Fund I LLC and DCOFI Master LDC - due diligence documentation

Jenn,

Admiral Administration is again asking for Michael's CV-- I think you may need to put something together quickly with dates, etc. as long as it conforms with his bio info in the PPM. I'll wait until I hear back from you before replying to Admiral.

Thanks - Lito

Manuel D. Ron
DC Asset Management LLC
830 Third Avenue, 14th Floor
New York, New York 10022

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From: Sabrina Baker [mailto:sabrina.baker@admiraladmin.com]
Sent: Monday, June 07, 2004 12:35 PM
To: Manuel Ron
Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - due diligence documentation

Dear Manuel,

I hope you're having a good start to the week after some good golf this past weekend.

I'm just writing to follow up on some outstanding matters. Specifically, kindly advise when we may anticipate receipt of the following information:

1. The due diligence documentation requested for David Fuchs, and
2. The CV for Michael Crow.

Many thanks!

FYI - many thanks for the original professional reference letters for Mr. Smithline and yourself which we received on June 3, 2004.

Cheers!
Sabrina

-----Original Message-----

From: Sabrina Baker
Sent: Tuesday, June 01, 2004 11:04 AM
To: 'Manuel Ron'
Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - bank accounts

Good morning Manuel,

Great to hear golf was a success for you this weekend. After years of on and off golfing, I'm still learning how to pull a good game together (my putting is atrocious for a girl). If you do make it down here, we'll set up a tee off time for you and I'll send along our best golfer in the office so you can enjoy a real game.

Many thanks for sending your original reference letter in your next package.

On a separate matter, could I please trouble you to forward to me via email the professional CVs for the individuals for which we have collected due diligence (e.g. Michael Crow, Richard Smithline, Jeffrey Haas and yourself). We have recently changed our internal policy re some of the data we collect and I neglected to update this in the original due diligence request I sent to you. My apologies.

Many thanks!

Kind regards,

Sabrina

-----Original Message-----

From: Manuel Ron [mailto:mr@duncancapital.net]
Sent: Tuesday, June 01, 2004 9:02 AM
To: Sabrina Baker
Subject: RE: DC Opportunity Fund I LLC and DCOFI Master LDC - bank accounts

Excellent, Sabrina - thanks for all your help on such short notice - if I ever get down your way, drinks are on me.

BTW, today I received an original copy of my reference letter from Paul Homsy, partner in Fognani Guibord & Homsy law firm, I'm not sure if you also received a copy or fax, so I am attaching a pdf version for your records and will include the original in my next package.

Again, thanks for the help - and golf was great.

- Manuel

Manuel D. Ron
DC Asset Management LLC
830 Third Avenue, 14th Floor
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From: Sabrina Baker [mailto:sabrina.baker@admiraladmin.com]
Sent: Friday, May 28, 2004 9:48 AM
To: Manuel Ron
Cc: Ronan Gullfoyle
Subject: DC Opportunity Fund I LLC and DCOFI Master LDC - bank accounts

Good morning Manuel,

I hope you are enjoying the start of your extra long weekend.

I just wanted to send you a quick update regarding the Deutsche Bank (Cayman) Limited bank accounts for the above noted funds. I just received a call from our contact at the bank who advised these accounts are now open and able to receive monies. As you learn about subscriptions you are expecting for the funds, please advise Ronan so he can be on the lookout for subscription documents and monies. Many thanks.

Best of luck with your golf game this weekend!

Kind regards,

Sabrina A. Baker
Compliance Officer
Admiral Administration Ltd.
Anchorage Center, 2nd Floor
PO Box 32021 SMB
Grand Cayman, Cayman Islands
P: 345 949 0704
F: 345 949 0705 or 345 949 9431
sabrina.baker@admiraladmin.com

MICHAEL CROW

1133 Cedar Road
Southport, CT 06890

Work: 212-581-5150 Email: mc@duncancapital.net

EXECUTIVE CAREER PROFILE

**Business Development Executive / General Manager / Marketing Manager
Consumer Packaged Goods, Technology & Marketing Services**

Expertise building, marketing and building financial service firms. Outstanding presentation, communication and team management skills. Entrepreneurial attitude, energy and style with focus on execution.

- Executive Sales, Marketing & Business Development
- Revenue Growth & Profit Improvement
- Alliances & Joint Ventures
- Strategic Planning & Implementation
- New Venture & Enterprise Start-Up/Launch
- Capital Structure and Placement
- Mergers & Acquisition Expertise
- Team-Building & Performance Optimization
- ROI Execution & Measurement

PROFESSIONAL EXPERIENCE:**DUNCAN CAPITAL GROUP LLC****2002-Present**

A privately owned merchant bank focused on providing exceptional investment and advisory services for its clients

President, Chief Executive Officer – Duncan Capital Group LLC

Chairman, Chief Executive Officer – DC Asset Management LLC

Managing Partner – DC Opportunity Fund I LLC

Managing Partner – Bridges and PIPes Fund LP

Specific Achievements: (note: dollar amounts are intended to show scale; exact figures are not provided to protect confidentiality)

- Duncan Capital LLC (NASD Broker-Dealer) currently ranked 7th in U.S. in private placements
- Bridges & PIPes up 32% net in 2004, 44% net in 2003

CROW & CROW LLC**1994-2002**

A boutique financial services firm

Founder, Managing Partner of this venture capital and merchant banking partnership. Limited partners included high net worth individuals and family offices.

Chairman, Principal Shareholder of several companies including California Cosmetics, Advanced Materials Corp, Innovative Technologies Ltd, and ZipDirect LLC.

SECURITY PACIFIC CORPORATION

Senior Vice President, Deputy to the Vice Chairman – Security Pacific Corporation

Allied Member of New York Stock Exchange – Security Pacific Corporation

Senior Vice President, Chief Financial Officer – Security Pacific International

PRICE WATERHOUSE COOPER

Senior Management Consultant, CPA – International Department in San Francisco. Clients included government of Singapore Investment Company, Microsoft, Callishan Group, General Atlantic Ventures and Hewlett Packard.

EDUCATION:

Owner President Manager Program, Harvard Business School, 2002-Present
Graduate of University Honors Program as well as B.S., Accounting, cum laude,
San Diego State University, CPA in California 1981

Exhibit B

BUTZEL LONG
ATTORNEYS AND COUNSELORS

Martin P. Russo
212 323-8600
russo@butzel.com

22nd Floor 380 Madison Avenue
New York, New York 10017
T: 212 818 1110 F: 212 818 0494
butzel.com

June 20, 2008

By Email and U.S. Mail

Preethi Krishnamurthy
U.S. Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Room 400
New York, NY 10281-1022
KrishnamurthyP@SEC.GOV

Re: SEC v. Michael W. Crow, et al. 07 Civ. 3814 (CM)

Dear Preethi:

We write in response to your emails regarding Jennifer Handy. We have attempted to contact Ms. Handy to confirm that she will not be available at the time of trial and that she has information that is necessary for this action. Ms. Handy has not returned our calls and we have been unable to verify either issue. Is she under your control? If so, please encourage her to contact us immediately.

Without further information, and based upon your email exchange with Mr. Sirota yesterday, we object to your deposing Ms. Handy after the close of discovery and will oppose any motion seeking to do so. You chose not to depose Ms. Handy despite being aware of her and having ample opportunity to do so during the normal course of discovery. Your claim that Ms. Handy's testimony is necessary to impeach Mr. Crow on the issue of his review of a resume is without merit. Impeachment on a collateral issue is not proper. Moreover, your email of June 19, 2008 mischaracterizes Mr. Crow's testimony with respect to Exhibit 156. At his deposition, Mr. Crow clearly stated that he could not recall the document, did not recall preparing or reviewing the document, and (based on the gross inaccuracies it contains) did not believe he was involved in drafting it.

Detroit Bloomfield Hills Ann Arbor Lansing Holland Boca Raton Palm Beach Washington D.C. New York

Alliance Offices Beijing Shanghai Member Lex Mundi www.butzel.com

Preethi Krishnamurthy
June 20, 2008
Page 2

Accordingly, we will oppose any motion for leave of the court to depose Ms. Handy.

Sincerely,



Martin P. Russo

cc: Jack Kaufman (*by email only*)
Howard Sirota (*by email only*)

BUTZEL LONG

Krishnamurthy, Preethi

From: howard@sirotalaw.com
Sent: Thursday, June 19, 2008 5:10 PM
To: Krishnamurthy, Preethi
Cc: russo@butzel.com; cohen@butzel.com; Kaufman, Jack; agilbert@nixonpeabody.com
Subject: RE: SEC v. Michael W. Crow, et al.

Preethi

I'm sorry but I'm not changing my position based upon this trivial "contradiction" that is not actually relevant or material to impeach Mr. Crow's credibility. There is no real probative value to this impeachment of credibility because it is just as likely that Mr. Crow forgot as not, when he testified.

If this is what you are grasping for as impeachment after the close of fact discovery, you should voluntarily discontinue the action rather than seek a deposition to establish a trivial point.

Let's agree to disagree.

Regards,

Howard

----- Original Message -----

From: Krishnamurthy, Preethi [mailto:KrishnamurthyP@SEC.GOV]
To: howard@sirotalaw.com
Cc: russo@butzel.com, cohen@butzel.com, KaufmanJa@SEC.GOV, agilbert@nixonpeabody.com
Sent: Thu, 19 Jun 2008 12:54:20 -0400
Subject: RE: SEC v. Michael W. Crow, et al.

Mr. Sirota, we do have new and important information that we expect to elicit from Ms. Handy, which we will explain to the court. At his deposition on March 19 -- 9 business days before the close of discovery -- Mr. Crow testified that he had no involvement in the preparation or review of his resume marked as Exhibit 156. The resume attributed particular achievements of the broker-dealer to Mr. Crow. In the e-mail string to which the resume was attached, Ms. Handy made it clear that Mr. Crow had reviewed and edited the resume. Nevertheless, Mr. Crow denied doing so at his deposition. We have spoken with Ms. Handy, who confirmed that Mr. Crow did review and approve his resume. We only recently learned (as did Ms. Handy) that Ms. Handy may be leaving the jurisdiction.

We do not expect this deposition to take more than half a day and we will of course do our best to work with you to schedule the deposition.

Please let us know by the end of the day tomorrow whether your position has changed; if not, we will note your objection in our letter to the court.

Preethi Krishnamurthy
Senior Counsel
U.S. Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Room 400
New York, NY 10281-1022
(212) 336-0116

-----Original Message-----

From: howard@sirotalaw.com [mailto:howard@sirotalaw.com]
Sent: Thursday, June 19, 2008 11:49 AM
To: Krishnamurthy, Preethi
Cc: russo@butzel.com; cohen@butzel.com
Subject: RE: SEC v. Michael W. Crow, et al.

Preethi

I will not agree to depose Michael Crow's former secretary when we are facing a July 15, 2008 deadline to file the voluminous PTO. In addition, I have personal issues which combine with my prior schedule to make me unavailable in July; as I told you, my wife is having a double mastectomy tomorrow at Sloan-Kettering and is expected to be hospitalized until Monday June 23, 2008 and to need three to four weeks to recover at home. I cannot see the urgency or non-cumulative content of the testimony of a former secretary; will you next seek leave to depose the former men's room attendant?(just kidding)

What new or important information do you expect to elicit from a former secretary?

Haven't you known for months or years that Jennifer Handy was formerly Michael Crow's secretary?

Do you claim to have new information you did not possess prior to the expiration of fact discovery?

Unless you have answers to these points, I will oppose diverting our limited remaining time to file the PTO to depose a former secretary.

Regards,

Howard

----- Original Message -----

From: Krishnamurthy, Preethi [mailto:KrishnamurthyP@SEC.GOV]

To: Russo@butzel.com, howard@sirotalaw.com

Cc: cohen@butzel.com, KaufmanJa@SEC.GOV, agilbert@nixonpeabody.com

Sent: Thu, 19 Jun 2008 11:10:26 -0400

Subject: SEC v. Michael W. Crow, et al.

Marty and Howard:

To follow up on our discussion on Tuesday, we intend on Monday to seek leave from the court to depose Jennifer Handy, because she may be moving to London in mid-July. Please let us know by the end of the day tomorrow whether you consent. If you want to discuss this further, we

are available to discuss this today or tomorrow.

Preethi Krishnamurthy

Senior Counsel

U.S. Securities and Exchange Commission

New York Regional Office

3 World Financial Center, Room 400

New York, NY 10281-1022

(212) 336-0116